stations owned by Asian-Americans and three owned by Native Americans.[81] The Commission recently recognized the lack of opportunities for minorities in media by agreeing to co-sponsor a forum to discuss this issue.[82]

The unprecedented consolidation of the radio industry has adversely affected the listening public. A reporter from The Washington Post recently concluded,

> What's already clear is that the listener is the loser. In recent months, I have asked executives at several big radio companies to cite examples of the new diversity of programming they had promised. Not a one came up with anything but slight variations on the standard, bland "adult contemporary" music formats that dominate the dial.[83]

In response to this trend, thousands of listeners have formed Americans for Radio Diversity, "which aims to revive the feel of local owners in an era of distant owners and nationally syndicated programming," by using the proceeds from benefit albums to support independent stations around the country.[84] To preserve the public's access to diverse viewpoints, the Commission must retain or strengthen the local radio ownership rules.

B. The wave of consolidation has resulted in a reduction in public affairs and news programming

The consolidation of local radio ownership resulting from the 1996 Act has led to reduced production of public affairs and local news programming. This change reflects an increase in

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[81] Id.

[82] See, Statement of FCC Chairman William E. Kennard Applauding Jimmy Smits' Call for Promoting Opportunity in the Entertainment Industry, June 23, 1998, at <www.fcc.gov> (July 9, 1998).

[83] Marc Fisher, The Great Radio Rebellion, The Turned Off Fight Back, Wash. Post, June 2, 1998, at D1.

[84] Id.

"the number of absentee owners of broadcast stations. . . [whose] reigning mentality [is]. . .cut costs, squeeze money from new properties and fight for every last dollar."[85] While proponents of greater consolidation claim it will allow them more funds for public affairs and news programming "[t]he group broadcast owners cannot concurrently pump money into local programming and 'squeeze money' from their new stations."[86] Thus, owners have increased syndicated programming and reduced the number of local public affairs shows.

Many broadcasters have begun out-sourcing the production of news and public affairs programs. Moreover, in some cases, they are relying on the same outside production companies as other broadcasters in their market. For example, Metro Networks Inc., a Houston-based company, currently provides all the news programming to 10 Washington, DC radio stations.[87] Metro Networks Inc. is ranked by Business Week Magazine as one of the fastest growing companies in the United States, and Benson Riseman, mid-Atlantic manager for Metro Networks Inc., credits its growth to the great interest in "out-sourcing" his company has found at many radio stations.[88] Similarly, Capstar Broadcasting uses ten announcers based in Austin, Texas to record all the between song-breaks, weather and traffic breaks for 37 of its stations in Texas,

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[85]Jill Howard, Congress Errs in Deregulating Broadcast Ownership Caps: More Monopolies, Less Localism, Decreased Diversity and Violations of Equal Protection, 5 CommLaw Conspectus, 269, 280 (1997), citing Mark Gimein, Groups Look to Cut Costs, Set the Pace, MediaWeek, Sept. 9, 1996, at MQ28.

[86]Id., citing Chuck Taylor, Westinghouse, Infinity Merger Fuels Consolidation Concerns, Billboard, July 6, 1996.

[87]Peter Kaplan, Wave of Mega Mergers Signals Changes Across Radio Dial: Critics Fear less Diversity, More Expensive Adds; New Giants Emphasize Efficiency, Experimentation, Wash. Times, Aug. 4, 1997, at D12.

[88]Id.

Arkansas and Louisiana.[89] Thus, the increased efficiencies cited by proponents of relaxed ownership limits, are not resulting in more or even better local news, but in homogenized news programming.

Radio station owners' increased reliance on out-sourcing stems from their interest in improving earnings to validate higher stock valuations.[90] In other words, station owners are keeping the cost savings from increased efficiencies rather than using the money to better serve the public. The owners' financial success is reflected in the Bloomberg/Broadcast & Cable radio index which has increased in value 107%, while the S&P 500 index has increased only 31%.[91] In 1996 and 1997 the value of radio stations increased by 13.8 billion dollars.[92] This increase in value was the result of a 10% increase in station value in the first year of the 1996 Act and a 22% increase in value in the second year.[93] Clearly very few, if any, of the benefits from the increased scale economies have been passed on to the consumers whom the stations are licensed to serve.

C. Further relaxing the local ownership rules will adversely affect competition

The 1996 Act has reduced the amount of competition in the local radio market.[94] Since

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[89]Anthony DeBarros, Amid Consolidation, Fear of Less Diversity, Choice, USA Today, July 7, 1998 at 1A-2A.

[90]Id.

[91]Review of the Radio Industry, 1997, MM Docket No. 98-35, March 13, 1998, at 21.

[92]John M. Higgins, As Broadcasters Giveth, They Taketh in Billions, Broadcasting & Cable, Apr. 6, 1998, at 80.

[93]Id.

[94]Bill Ryan, the president and CEO of Newsweek Stations comments that "the Telecom bill was supposed to create more and more competition. It hasn't." David Hatch, Telecom Law Fails the Test, Electronic Media, Feb. 3, 1997, at 31.

the passage of the 1996 Act, more than 4,000 of the 11,000 radio stations have changed hands.[95] As the FCC notes in its report, while the number of radio stations has grown, the number of independent radio owners has decreased in all markets.[96] These figures indicate a general trend towards increased economic concentration across markets with fewer owners earning a larger percentage of the revenue in the markets. The Commission found that by November 1997, the top four radio owners accounted for 90% of their metro markets total revenue and the percentage may be even higher in smaller markets.[97] For example, in Rochester, New York, the fourteen stations owned by three conglomerates controlled 94% of the radio ad revenue in 1997.[98] This increased consolidation has resulted in markets which are extremely vulnerable to anti-competitive behavior on the part of the large group owners.

Further indicative of the increased concentration, and the consequently increased danger of anti-competitive behavior, is the fact that by November 1997 all of the top 250 local radio markets were above 1800 on the Herfindahl-Hirschman Index ["HHI"].[99] Thus, according to the Department of Justice and Federal Trade Commission's 1992 Horizontal Merger Guidelines, all of these markets are highly concentrated.[100] In such markets, a merger between two firms is

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[95]Michael J. Sniffen, Chancellor Drops Bid for Radio Stations, Wash. Post, Apr. 1, 1998, at C12.

[96]Review of the Radio Industry, 1997, MM Docket No. 98-35, March 13, 1998, at 2, 6.

[97]Id. at 10.

[98]Anthony DeBarros, Amid Consolidation, Fear of Less Diversity, Choice, USA Today, July 7, 1998 at 1A-2A.

[99]Review of the Radio Industry, 1997, MM Docket No. 98-35, Mar. 13, 1997, at 8.

[100]In its report, the FCC notes that mergers that result in HHIs over 1800 "warrant scrutiny." Id., at 8, n.14.

much more likely to have anti-competitive effects.[101] In fact, in a market that is above 1800 on the index, a merger between two entities which produces a change in HHI of more than 100 points is presumed to create or enhance market (monopoly) power or facilitate its exercise.[102] If the Commission further promotes consolidation by again relaxing the ownership limits, it would be encouraging the creation and the exercise of market (monopoly) power and all its subsequent anti-competitive effects, within the local radio industry. The Commission should take action to reduce concentration in the industry and promote competition by encouraging Congress to amend the 1996 Act to strengthen the local radio ownership limits.

V. The Commission Should Maintain the Daily Newspaper/Broadcast Cross-Ownership Rule Because it Serves the Public Interest

It is necessary to the democratic process that information on television, radio and in newspapers come from diverse sources because the public relies on these media to provide them with news coverage. Television, radio and newspapers are the most important tools for shaping public opinion on local issues.[103] A recent Roper survey reported that 69% of adults receive most of their news from television, 37% receive most of their news from newspapers and 14% from radio.[104] Another source reports that 80% of American adults read either a daily or Sunday

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[101]U.S. Dept. of Justice and Federal Trade Commission, 1992 Horizontal Merger Guidelines, at § 1.51 at <http//www.ftc.gov/bc/docs.horizmer.htm> (Apr. 15, 1998).

[102]Id.

[103]For a discussion of the importance of the prohibition of newspaper/radio cross-Ownership, see Black Citizens for a Fair Media, et al., Comments, Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197 (Feb. 7, 1997).

[104]Mass Media, Communications Daily, May 29, 1997. This 69% figure for television could include the viewing of cable television. However, rarely does cable provide original local news programming; it generally carries only local broadcast station signals.

newspaper.[105] The newspaper/broadcast cross-ownership rule ensures that editorial control of local news coverage is placed in various hands, thereby encouraging the expression of diverse viewpoints.

Cross-ownership of broadcast and newspaper media may give an owner the power to control or manipulate local news and viewpoints available to the public. Thus, if the cross-ownership rule were repealed, news or viewpoints which are critical of the owner or unfavorable to its business interests could go unreported in a community. For example, a study of television and newspaper reports on the recent digital television spectrum giveaway found that media owners' financial interests affected their coverage of the topic.[106] Newspapers whose owners received little revenue from television criticized the spectrum giveaway, while newspapers whose owners received substantial revenue from television supported it; television stations blacked out the issue altogether.[107] If the newspapers in a market were owned by the same entities which owned broadcast stations, the newspapers may not have provided critical coverage of the issue and much of the public would have been uninformed.[108] This lack of critical coverage demonstrates the potential for common owners to keep news or viewpoints damaging to their pocketbooks out of the public reach.

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[105]Developments in the News Industry for March 23-30, Associated Press, Mar. 30, 1998 (citing 3/30/98 speech given by Tony Ridder, Chairman and CEO of Knight Ridder).

[106]James H. Snider, Does Media Ownership Influence Media Stands? The Case of the Telecommunications Act of 1996, (Apr. 12, 1997) at 12, in 25th Annual Telecommunications Policy Research Conference, Sept. 27-29, 1997.

[107]Id. at 11-24.

[108]Id.

Finally, if the newspaper/broadcast cross-ownership rule were repealed, it would create an incentive for common owners to reduce costs by consolidating news staffs at commonly-owned broadcast stations and newspapers. This consolidation would hurt the public interest by further reducing the number of diverse sources of local information and viewpoints available to the public. When news staffs are consolidated, the public loses because fewer voices of reporters, photographers and editors are available to contribute differing viewpoints, backgrounds and ideas. In addition, combined staffs can no longer provide a check on each other's accuracy and coverage of local news and information.

Because much of the public does not have access to the Internet or to a cable system which provides original local news coverage, these new technologies are not enough to ensure that the public will receive information from diverse and antagonistic sources. The broadcast industry and the newspaper industry are each already highly concentrated. The Commission should not encourage further consolidation of news outlets by repealing or modifying the newspaper/broadcast cross-ownership rule.

VI. The Commission Should Maintain the Cable/Television Cross-Ownership Rule to Provide Opportunities for Additional Diverse Local News Coverage

The Commission should maintain the cable/television cross-ownership rule because separate cable and television ownership provides an opportunity for additional local news coverage from diverse sources. Cable operators have the potential to increase the availability of local news coverage to the public by creating or carrying local cable news channels. As of September 1997, there were thirteen local cable news channels in the U.S. which were not affiliated with broadcast stations.[109] These channels are extremely popular[110] and serve the public interest by providing a check on broadcast stations' local news coverage and ensuring that a diversity of sources are available to inform the public on local issues. If common ownership of cable systems and broadcast television stations were permitted, cable operators would be unlikely to carry local news cable channels because they would not want to compete with their own television station.[111] Even if the common owner created a local cable news station, it would not be providing a diverse source of local news programming because of the common ownership. Furthermore, the owner would likely consolidate the staffs of the cable and broadcast station newsrooms to reduce operating costs. By maintaining the cable/television cross-ownership rule, the Commission will preserve cable operators' incentive to provide a diverse source of local news to the public through the creation or carriage of independent local cable news stations.

VII. Conclusion

The FCC's implementation of the 1996 Act has resulted in unprecedented concentration of the broadcast industry. To preserve the public's access to diverse sources of information and to promote broadcast ownership opportunities for minorities and women, the Commission should retain or seek to strengthen the national television ownership rules and the local radio ownership

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[109] John Dempsey & Gary Levin, News Derby Upset by TV Dark Horse, Variety, Sept. 22-28, 1997, at 1. There are at least a dozen additional cable channels programmed by local television stations. Id.

[110] Id. (NY1 News, a local New York City news cable channel, beats CNN and CNN Headline News regularly in the ratings; New England Cable News has beaten all other stations in the market in ratings at least once).

[111] Id. These cable channels "are luring audiences and advertising dollars away from local broadcast news and publications." Id.

rules. In addition the Commission should continue to prohibit newspaper/broadcast and cable/ television cross-ownerships.

Respectfully submitted,

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